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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/372,646 08/12/99 JURGОВAN

M 914-1372DIV1

IM22/0213

EXAMINER

STEPHEN B PARKER
ROTHWELL FIGG ERNST & KURZ PC
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BECKER, D

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

02/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

NOTED FOR RECORDING	
ROTHWELL FIGG ERNST & MANBECK	
FEB 14 2001	
REFERRED TO	73914
FILED TO	914-1372
OK TO FILE	

ENTERED
2/15/01 D.W.

Office Action Summary

Application No.

09/372,646

Applicant(s)

JURGOVAN ET AL

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 14) ☐ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 17) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff [Pat. No. 4,617,683].

Christoff teaches a packaged product comprising elastomeric front and rear walls (Figure 2, 23-24), a top seal (Figure 2, 42), first and second interlocking zipper parts attached to the inside surfaces of the walls (Figure 2, 44), the package being pinch-grip openable (column 6, lines 30-44), the top seal being formed by sealing bars which exert a pressure (column 5, line 14), a rib and groove zipper as exemplified by Staller [Pat. No. 3,440,696] having a single male protrusion and single female socket (Figure 5, 48-49 of Staller) (column 9, line 41 of Christoff), walls of laminate materials (column 4, lines 4-23), a bottom seal (Figure 2, 42), and adhesive connecting the zipper and walls (column 6, line 62). Phrases such as "under a pinch-grip pulling force applied to said front and rear walls below said engagement members" in claim 1 and "pinch-grip pulling force applied to each of said front and rear walls below said zipper" in claim 17 are preferred methods of use of the claimed package and therefore are not given weight. It would have been obvious to one of ordinary skill in the art to package foods such as

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potato chips in the invention of Christoff since Christoff shows what appear to be chips in Figures 1-2 and teaches the conventionality of packaging potato chips in bags (column 2, line 24). It would have been obvious to one of ordinary skill in the art to form the top seal of Christoff with heat since Christoff already teaches heat sealing a fin seal (column 4, line 64) and since heat seals were commonly used for top seals as evidenced by Thompson et al [Pat. No. 5,224,779] (Figure 5, 28).

3. Claims 13-16 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff as applied to claims 1 and 17 above, in view of Thompson et al.

Christoff teaches the above mentioned concepts. Christoff does not teach pinch grip forces of 1-2 lb/in for the top seal and 1.5-2 lb/in for the zipper. Thompson et al teach a food package comprising a top seal above a zipper (Figures 2-3, 21-22 and 17-18) and an opening force of 1.5-6.0 lb (column 3, line 5). It would have been obvious to one of ordinary skill in the art to incorporate the opening force of Thompson et al into the invention of Christoff since both are directed to packages with top seals and lower zippers and since Thompson et al teach that this is a common range of opening force for packages (column 3, line 4).

Response to Arguments

1. Applicant's arguments filed January 29, 2001 have been fully considered but they are not persuasive.

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Applicant argues that Christoff only teaches opening the package from above the zipper. As mentioned above, this is merely a preferred method of using the claimed package and as such is not given weight.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for

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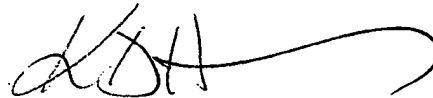
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the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew Becker
February 5, 2001

A handwritten signature in black ink, appearing to read 'KH', with a long, sweeping horizontal line extending to the right.

KEITH HENDRICKS
PRIMARY EXAMINER